

133. Resellers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under SBA rules is for all telephone communications companies. The most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 260 companies reported that they were engaged in the resale of telephone services.³⁸² Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 260 small entity resellers that may be affected by the decisions and rules adopted in this Second Report and Order.

4. Cable System Operators (SIC 4841)

134. SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating less than \$11 million in revenue annually.³⁸³ This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,788 such cable and other pay television services, and 1,423 had less than \$11 million in revenue.³⁸⁴

135. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company," is one serving fewer than 400,000 subscribers nationwide.³⁸⁵ Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small

³⁸² Id.

³⁸³ 13 CFR § 121.201, SIC 4841.

³⁸⁴ 1992 Economic Census, Industry and Enterprise Receipts Size Report, Table 2D, SIC 4841 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

³⁸⁵ 47 C.F.R. § 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of \$100 million or less. Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393 (1995), 60 FR 10534 (February 27, 1995).

cable system operators at the end of 1995.³⁸⁶ Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules adopted in this Second Report and Order.

136. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."³⁸⁷ The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.³⁸⁸ Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450.³⁸⁹ We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000,³⁹⁰ and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act. It should be further noted that recent industry estimates project that there will be a total of 65,000,000 subscribers, and we have based our fee revenue estimates on that figure.

137. To the extent that any statement contained in this FRFA is perceived as creating ambiguity with respect to our rules or statements made in preceding sections of this Second Report and Order, the rules and statements set forth in those preceding sections shall be controlling.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements:

³⁸⁶ Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

³⁸⁷ 47 U.S.C. § 543(m)(2).

³⁸⁸ 47 CFR § 76.1403(b).

³⁸⁹ Paul Kagan Associates, Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

³⁹⁰ We do receive such information of an case-by-case basis only if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.1403(b) of the Commission's rules. See 47 CFR § 76.1403(d).

138. In this Second Report and Order, we adopt a new certification requirement to prevent warehousing of toll free numbers. We conclude that warehousing, which we define as the practice by which RespOrgs. either directly or indirectly through an affiliate, reserve toll free numbers from the SMS database without having an identified subscriber for whom those numbers are being reserved, is an unreasonable practice under Section 201(b) of the Communications Act and is inconsistent with our obligation under § 251(e) of the Communications Act to ensure that numbers are made available on an equitable basis, and that we are authorized to penalize RespOrgs found to be violating our anti-warehousing rules. Under the new certification requirement, the act of reserving a toll free number from the database serves as certification that there is an identified subscriber agreeing to be billed for service associated with the toll free number. We believe that this certification requirement will not unduly burden RespOrgs, including small business entities, because the act of reserving the number constitutes the necessary certification; no other written statement is required. We anticipate that no new skills are necessary to comply with this requirement, and that no additional staff or other resources should be necessary to comply with this requirement.

Significant Alternatives and Steps Taken by Agency to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives:

a. Warehousing

139. As stated, we conclude that warehousing is an unreasonable practice under Section 201(b) of the Communications Act and is inconsistent with our obligation under § 251(e) of the Communications Act to ensure that numbers are made available on an equitable basis, and that we are authorized to penalize RespOrgs found to be violating our anti-warehousing rules. This conclusion is in the public interest, and will not have an adverse impact on RespOrgs, including small business entities, because all RespOrgs are subject to our warehousing rules and will be subject to penalties for violating them. Small RespOrgs will be affected in the same manner as non-small business entities.

140. We considered requiring RespOrgs to submit a written certification that they have an identified subscriber agreeing to be billed for service associated with each toll free number requested from the database and that they have an identified, billed subscriber before switching a number from reserved or assigned to working status. Commenters asserted that this requirement would impose an administrative burden without commensurate benefits. We concluded that such a requirement would create an unnecessary administrative burden on RespOrgs, including small business entities. Further, we considered requiring each RespOrg or toll free service provider to have an affirmative request from a subscriber prior to assigning a toll free number. Some commenters suggested that RespOrgs and toll free service providers

be required to retain records of affirmative requests for toll free service.³⁹¹ Other commenters opposed the record retention requirement, stating that it would impose an undue and unnecessary burden on RespOrgs and service providers.³⁹² We rejected the affirmative request and record retention alternatives as unnecessary, noting that the Commission wants to encourage innovative business practices and avoid unreasonable burdens. Further, a recordkeeping requirement would impose an undue burden on small businesses that may not have the personnel or the resources to fulfill the requirement.

b. Hoarding

141. In this Second Report and Order, we conclude that hoarding, which we define as an event that occurs when a toll free subscriber acquires more numbers from a RespOrg than it intends to use immediately, is also an activity that is contrary to the public interest. We further conclude that the private sale of numbers involved in number brokering is contrary to the public interest. Toll free subscribers found to be hoarding and brokering numbers will be penalized. This conclusion is in the public interest, and will not unreasonably harm toll free subscribers, including small business entities, because all toll free subscribers are subject to our rules against hoarding and brokering of numbers, and will be subject to penalties for violating them. Small toll free subscribers will be affected in the same manner as non-small business entities.

142. We considered, and commenters suggested, imposing a one-time and/or monthly fee for reservations of toll free numbers in order to assure that numbers are used efficiently, but concluded that it would not sufficiently deter the hoarding of toll free numbers. Further, such a requirement could place an undue financial burden on small business entities (either RespOrgs or subscribers) that may not have the financial resources to comply with such a fee requirement.

c. Lag Time Rules

143. In this Second Report and Order, we conclude that the authorized reservation period (the period within which a RespOrg holds a number in "reserved" status for a subscriber) for a toll free number should be reduced from 60 days to 45 days. We also conclude that the interval in which a number may be assigned (i.e. the RespOrg has specific

³⁹¹ See, e.g., BellSouth Comments at 2-3; Telemation International ("Telemation") Comments at 4; MFS Comments at 2-3.

³⁹² See, e.g., NEXTLINK Comments at 2 (noting that such a requirement would increase overhead expenses, to which small providers are especially sensitive).

subscriber routing information entered in the toll free database, but the number is pending activation in the SCPs), but not working, shall be reduced from 12 months to 6 months. If special circumstances require dedication of a toll free number far in advance of its actual usage, as was the case with the number dedicated to the 1996 Olympics, such numbers belong in the "unavailable" status, and not the assigned status. We require RespOrgs requesting unavailable status to submit written requests to DSML. Although MFS raised a concern that shortening the reserved interval could adversely affect small service providers because the larger service providers will have greater resources to adjust to a tighter time frame,³⁹³ we do not believe these requirements will adversely affect RespOrgs or toll free subscribers, including small business entities. Experience gained while the industry operated under the 800 conservation plans showed that little, if any, harm arose from shortening the intervals set in the Industry Guidelines.

144. In this Second Report and Order, we also conclude that certain elements of the aging process must be changed to achieve a more efficient use of toll free numbers. First, we conclude that the 6-month disconnect interval (the time within which a number has been disconnected but an exchange intercept recording is being provided to inform callers of that status) can be reduced to 4 months. We also conclude that a RespOrg should not be allowed to retrieve a number from disconnect status and return that number directly to working status at the expiration of the 4-month disconnect interval: the numbers in disconnect status must go directly into the spare category upon expiration of the 4-month disconnect interval. Second, we conclude that the 12-month suspended interval (the time within which a number is temporarily disconnected and is scheduled to be reactivated) should be reduced to 8 months, and that only numbers involved in billing disputes will be eligible for such status. We do not believe that compliance with these requirements will be unduly burdensome for RespOrgs, including small business entities; no additional financial, technical, or staffing resources should be necessary for a RespOrg to comply with these requirements. Further, compliance with these requirements is essential to make toll free numbers available for reservation by all RespOrgs, including small business entities, for the general public. We have concluded that these reductions will not cause significant inconvenience to callers, subscribers, or RespOrgs, including small business entities. A four-month disconnect interval was effective during the 800 conservation plan. The experience of AT&T, which stated that it did not experience complaints regarding excessive misdialing, unreasonable expense to new toll free subscribers, or confusion to toll free callers, indicates that a permanent reduction to that level will not cause the inconvenience some commenters predict.³⁹⁴

³⁹³ MFS Comments at 4-5.

³⁹⁴ AT&T Comments at 10.

d. Escrow Requirement

145. We considered imposing an escrow deposit requirement for each toll free number held in reserved status. Commenters noted that such a requirement could place a financial burden on RespOrgs, particularly smaller RespOrgs, and could discourage some customers from subscribing to toll free service.³⁹⁵ Small RespOrgs could be placed at a disadvantage by the financial burden of an escrow deposit requirement. Further, small business entities which may benefit from obtaining a toll free number may be discouraged from doing so because of the financial burden of an escrow deposit. We also concluded that the costs associated with managing escrow deposits for all of the available toll free numbers appear to be burdensome. For these reasons, we will not impose an escrow requirement at this time.

e. Partitioning

146. We considered and sought comment on "partitioning" toll free service, leaving business entities and the majority of vanity number holders in the 800 SAC, while assigning subsequent toll free codes to personal and paging subscribers and subscribers of other services built upon the use of toll free dialing service that may develop in the future.³⁹⁶ We concluded that such an approach would most likely be unreasonably discriminatory because 800 service has existed for many years and 800 numbers would, at least initially, have greater recognition and acceptance than would numbers in relief toll free SACs. Further, if non-business applications such as paging and fax services were allowed to "grandfather" their numbers in 800, they would have a decided advantage over entities in the same line of business required to use a new SAC. The entities that would have been placed at a disadvantage by such an approach would probably have included small business entities. New business entities are often small, and the new entities would have been required to use the new SAC.

f. Permanent Cap on Reservations

147. In this Second Report and Order, we conclude that, to discourage warehousing, a cap imposed on a RespOrg's ability to reserve numbers is necessary. We find it necessary to reduce the current cap, which is based on the percentage of numbers in the "working" status. Because the addition of numbers in the 888 code essentially doubles the quantity of numbers available for toll free service and, eventually, working toll free numbers, we reduce

³⁹⁵ See, e.g., LDDS Comments at 5 (an escrow deposit requirement would increase the cost of toll free services with no corresponding benefits and would inevitably harm smaller RespOrgs).

³⁹⁶ NPRM at para. 46.

the cap from 15% of a RespOrg's numbers in working status to 7.5%. Acknowledging that this could place at a disadvantage RespOrgs that do not have a large quantity of numbers in "working" status, which may include small business entities, we conclude that doubling the minimum number of toll free numbers that RespOrgs are currently allowed to hold in "reserved" status under the Industry Guidelines will allow newer RespOrgs to grow without being constrained by a percentage-based cap. Again, there is a possibility that new RespOrgs will be small business entities, and that these small entities could be placed at a disadvantage because of the percentage-based cap. Therefore, we increased the minimum number of numbers a RespOrg can have in reserved status from 1000 to 2000 numbers, to ensure that new RespOrgs, which may include small business entities, are not placed at a disadvantage.

Report to Congress:

148. The Commission shall include a copy of this Final Regulatory Flexibility Analysis, along with this Second Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of this FRFA will also be published in the Federal Register.

C. INITIAL REGULATORY FLEXIBILITY ANALYSIS:

149. As required by § 603 of the Regulatory Flexibility Act (RFA),³⁹⁷ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies or rules proposed in this Further Notice of Proposed Rulemaking (Further Notice). Written public comments are requested in the IRFA. These comments must be filed in accordance with the same filing procedures as other comments in this proceeding, but they must have a separate and distinct heading designating them as responses to the IRFA. The Secretary shall send a copy of this Further Notice, including the IRFA set out below, to the Chief Counsel for Advocacy of the Small Business Administration (SBA) in accordance with the RFA, 5 U.S.C. § 603(a).

Need for and Objectives of the Proposed Rule: The Further Notice responds to concerns regarding what entity is the appropriate administrator of the toll free database. In the original Notice of Proposed Rulemaking in CC Docket No. 95-155, *In the Matter of Toll Free Service Access Codes*, we sought comment on whether the current administrator, Database Service Management, Inc. (DSMI), should continue to administer the toll free database. DSMI is a subsidiary of Bellcore, which is currently owned by the Regional Bell Operating Companies

³⁹⁷ See 5 U.S.C. § 603. The Regulatory Flexibility Act, see 5 U.S.C. § 601 et. seq., has been amended by the Contract With America Advancement Act of 1996, Pub.L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the "Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA).

(RBOCs).³⁹⁸ After comments were received on the NPRM, Congress passed the Telecommunications Act of 1996 (1996 Act), amending the Telecommunications Act of 1934. Section 251(e)(1) of the Telecommunications Act, as amended, charges the Commission with creating or designating one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. Given DSMI's ties to the RBOCs, the Further Notice tentatively concludes that DSMI's continuation as the toll free database administrator would violate § 251(e)(1) of the Telecommunications Act and seeks further comment on what entity should administer the toll free database. The objective of this proposal is to ensure that toll free numbers are allocated on a fair, equitable, and orderly basis.

Legal Basis: The proposed action is authorized under §§ 1, 4(i), 201-205, 218, and 251(e)(1) of the Communications Act, as amended, 47 U.S.C. §§ 151, 154(i), 201-205, 218 and 251(e)(1).

Description and Estimate of the Number of Small Entities To Which the Proposed Rule Will Apply: The proposals set forth in the Further Notice may have a significant impact on a substantial number of small entities. Neutral administration of the toll free database is of concern to all toll free subscribers and Responsible Organizations (RespOrgs), which include small business entities.

150. For the purposes of this Order, the RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act, 15 U.S.C. § 632, unless the Commission has developed one or more definitions that are appropriate to its activities.³⁹⁹ Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).⁴⁰⁰ SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small

³⁹⁸ On November 21, 1996, Science Applications International Corporation (SAIC) announced that it has agreed to purchase Bellcore. The transaction is expected to be finalized in late 1997, and is dependent upon Bellcore's owners obtaining the required regulatory approvals.

³⁹⁹ See 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632).

⁴⁰⁰ 15 U.S.C. § 632. See, e.g., Brown Transport Truckload, Inc. v. Southern Wipers, Inc., 176 B.R. 82 (N.D. Ga. 1994).

entities when they have fewer than 1,500 employees.⁴⁰¹ We first discuss generally the total number of small telephone companies falling within both of those SIC categories. Then, we discuss the number of small businesses within the two subcategories, and attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

151. Consistent with our prior practice, we shall continue to exclude small incumbent LECs from the definition of a small entity for the purpose of this FRFA. Nevertheless, as mentioned above, we include small incumbent LECs in our FRFA. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass "small incumbent LECs." We use the term "small incumbent LECs" to refer to any incumbent LECs that arguably might be defined by SBA as "small business concerns."⁴⁰²

1. Responsible Organizations

152. The proposals and tentative conclusions in the Further Notice apply to and would affect all RespOrgs, which may be small business entities. Any entity that meets certain eligibility criteria may serve as a RespOrg. Neither the Commission nor the SBA has developed a definition of small entities that would apply specifically to RespOrgs. The most reliable source of information regarding the number of RespOrgs appears to be data collected by DSMI, the organization that administers the toll free allotment database. According to a May 8, 1996, report obtained from DSMI, 168 companies reported that they were RespOrgs.⁴⁰³ Although it seems certain that some of these RespOrgs are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of RespOrgs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 168 small entity RespOrgs that may be affected by any decision on the Further Notice.

2. Toll Free Subscribers

153. The proposals and tentative conclusions in the Further Notice also apply to and would affect all toll free subscribers, which also may be small business entities. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to toll free subscribers. The most reliable source of information regarding the number of 800

⁴⁰¹ 13 C.F.R. § 121.201.

⁴⁰² See 13 C.F.R. § 121.210 (SIC 4813).

⁴⁰³ DSMI, SMS/800 Overview, SMS/800 Statistics (May 8, 1996).

subscribers of which we are aware appears to be the data we collect on the 800 numbers in use.⁴⁰⁴ According to our most recent data, at the end of 1995, the number of 800 numbers in use was 6,987,063. Similarly, the most reliable source of information regarding the number of 888 subscribers appears to be the data we collect on the 888 numbers in use.⁴⁰⁵ According to our most recent data, at the end of August 1996, a total of 2,014,059 888 numbers were assigned. Although it seems certain that some of these subscribers either are not independently owned and operated businesses, or do not have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 6,987,063 small entity 800 subscribers and fewer than 2,014,059 888 subscribers that may be affected by the decisions and rules adopted as a result of the Further Notice.

3. Telephone Companies (SIC 4813)

154. Total Number of Telephone Companies Affected. The decisions and rules adopted as a result of the Further Notice may have a significant effect on a substantial number of the small telephone companies identified by SBA. The United States Bureau of the Census ("the Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.⁴⁰⁶ This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated."⁴⁰⁷ For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by rules

⁴⁰⁴ Federal Communications Commission, Common Carrier Bureau, Industry Analysis Division, FCC Releases, Study on Telephone Trends, Tbl. 20 (May 16, 1996).

⁴⁰⁵ Federal Communications Commission, Common Carrier Bureau, Industry Analysis Division, Long Distance Carrier Code Assignments, p. 80, Tbl. 10B (October 18, 1996).

⁴⁰⁶ United States Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1-123 (1995) (*1992 Census*).

⁴⁰⁷ 15 U.S.C. § 632(a)(1).

adopted as a result of the Further Notice.

155. Wireline Carriers and Service Providers. SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992.⁴⁰⁸ According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons.⁴⁰⁹ All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules adopted as a result of the Further Notice.

156. Local Exchange Carriers. Neither the Commission nor SBA has developed a definition of small providers of local exchange services (LECs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS) Worksheet. According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services.⁴¹⁰ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,347 small incumbent LECs that may be affected by the decisions and rules adopted as a result of the Further Notice.

⁴⁰⁸ 1992 Census, supra, at Firm Size 1-123.

⁴⁰⁹ 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.

⁴¹⁰ Federal Communications Commission, CCB, Industry Analysis Division, Telecommunications Industry Revenue: TRS Fund Worksheet Data, Tbl. 1 (Average Total Telecommunications Revenue Reported by Class of Carrier) (Dec. 1996) (TRS Worksheet).

157. Interexchange Carriers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of IXCs nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 130 companies reported that they were engaged in the provision of interexchange services.⁴¹¹ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 130 small entity IXCs that may be affected by the decisions and rules adopted as a result of the Further Notice.

158. Competitive Access Providers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of CAPs nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 57 companies reported that they were engaged in the provision of competitive access services.⁴¹² Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 57 small entity CAPs that may be affected by the decisions and rules adopted as a result of the Further Notice.

159. Operator Service Providers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of operator service providers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 25 companies reported that they were engaged in the provision of

⁴¹¹ Id.

⁴¹² Id.

operator services.⁴¹³ Although it seems certain that some of these companies are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 25 small entity operator service providers that may be affected by the decisions and rules adopted as a result of the Further Notice.

160. Pay Telephone Operators. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of pay telephone operators nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 271 companies reported that they were engaged in the provision of pay telephone services.⁴¹⁴ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 271 small entity pay telephone operators that may be affected by the decisions and rules adopted as a result of the Further Notice.

161. Wireless (Radiotelephone) Carriers. SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992.⁴¹⁵ According to SBA's definition, a small business radiotelephone company is one employing fewer than 1,500 persons.⁴¹⁶ The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers

⁴¹³ Id.

⁴¹⁴ Id.

⁴¹⁵ United States Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1-123 (1995) (1992 Census).

⁴¹⁶ 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.

and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the decisions and rules adopted as a result of the Further Notice.

162. Cellular Service Carriers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of cellular services. The closest applicable definition under SBA rules is for radiotelephone (wireless) companies. The most reliable source of information regarding the number of cellular service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 792 companies reported that they were engaged in the provision of cellular services.⁴¹⁷ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 792 small entity cellular service carriers that may be affected by the decisions and rules adopted as a result of the Further Notice.

163. Mobile Service Carriers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. The closest applicable definition under SBA rules is for radiotelephone (wireless) companies. The most reliable source of information regarding the number of mobile service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 138 companies reported that they were engaged in the provision of mobile services.⁴¹⁸ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of mobile service carriers that would qualify under SBA's definition. Consequently, we estimate that there are fewer than 138 small entity mobile service carriers that may be affected by the decisions and rules adopted as a result of the Further Notice.

164. Broadband Personal Communications Service (PCS). The broadband PCS spectrum is divided into six frequency blocks designated A through F and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous

⁴¹⁷ TRS Worksheet at Tbl. 1 (Number of Carriers Reporting by Type of Carrier and Type of Revenue).

⁴¹⁸ Id.

calendar years.⁴¹⁹ For Block F, an additional classification for "very small businesses" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.⁴²⁰ These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F.⁴²¹ However, licenses for blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by the SBA and the Commission's auction rules.

165. SMR Licensees. Pursuant to 47 C.F.R. § 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than \$15 million in the three previous calendar years. This definition of a "small entity" in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.⁴²² The rules adopted as a result of the Further Notice may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than \$15 million. We assume, for purposes of this FRFA, that all of the extended implementation authorizations may be held by small entities, which may be affected by the decisions and rules adopted as a result of the Further Notice.

⁴¹⁹ See Amendment of Parts 20 and 24 of the Commission's rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap. Report and Order, FCC 96-278, WT Docket No. 96-59, paras. 57-60 (released June 24, 1996) 61 FR 33859 (July 1, 1996); see also 47 CFR § 24.720(b).

⁴²⁰ Id. at para. 60.

⁴²¹ FCC News, Broadband PCS, D, E and F Block Auction Closes, No. 71744 (released January 14, 1997).

⁴²² See Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89-583, Second Order on Reconsideration and Seventh Report and Order, 11 FCC Rcd 2639, 2693-702 (1995); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 1463 (1995).

166. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by any rule adopted as a result of the Further Notice includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of this FRFA, that all of the licenses may be awarded to small entities who, thus, may be affected by the decisions adopted as a result of the Further Notice.

167. Resellers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under SBA rules is for all telephone communications companies. The most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 260 companies reported that they were engaged in the resale of telephone services.⁴²³ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 260 small entity resellers that may be affected by the decisions and rules adopted as a result of the Further Notice.

4. Cable System Operators (SIC 4841)

168. SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating less than \$11 million in revenue annually.⁴²⁴ This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,788 such cable and other pay television services, and 1,423 had less than \$11 million

⁴²³ Id.

⁴²⁴ 13 CFR § 121.201. SIC 4841.

in revenue.⁴²⁵

169. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.⁴²⁶ Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.⁴²⁷ Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules proposed in this Further Notice.

170. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."⁴²⁸ The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.⁴²⁹ Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450.⁴³⁰ We do not request nor do we collect information concerning whether cable system operators

⁴²⁵ 1992 Economic Census, Industry and Enterprise Receipts Size Report, Table 2D, SIC 4841 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

⁴²⁶ 47 C.F.R. § 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of \$100 million or less. Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393 (1995), 60 FR 10534 (February 27, 1995).

⁴²⁷ Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

⁴²⁸ 47 U.S.C. § 543(m)(2).

⁴²⁹ 47 CFR § 76.1403(b).

⁴³⁰ Paul Kagan Associates, Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

are affiliated with entities whose gross annual revenues exceed \$250,000,000,⁴³¹ and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act. It should be further noted that recent industry estimates project that there will be a total of 65,000,000 subscribers, and we have based our fee revenue estimates on that figure.

Description of Projected Reporting, Record Keeping, and Other Compliance

Requirements: We seek comment on ACTA's proposal that would require DSMI, while it continues as the SMS database administrator, to report to the Commission. We also seek comment on a proposal to recover costs for toll free database administration through fees to the industry. We also seek comment on what, if any, affects the selection of a new toll free database administrator would have on small businesses. In particular, we seek comment on whether small entities anticipate having to hire additional professional staff or meet any other obligations as a result of the selection of a new administrator.

Significant Alternatives To Proposed Rule Which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives:

171. In the Further Notice, we seek comment on how the § 251(e)(1) directive that the Commission create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis affects the Commission's choice of administrator for the toll free database. We seek comment on what entity would be an appropriate neutral toll free database administrator, given that the Act opens all telecommunications markets to competition, and the current administrator is a subsidiary of Bellcore, which is presently owned by the RBOCs, a discrete industry segment. We tentatively conclude that, given DSMI's current ties to the RBOCs, DSMI's continuation as the toll free database administrator, at least until finalization of the sale of Bellcore, would violate § 251(e)(1) of the Telecommunications Act, as amended. We seek comment on this tentative conclusion, and seek comment on how the proposed sale of Bellcore⁴³² affects parties' views on the question of who should administer the toll free database.

172. Among other questions, we seek comment on how, if a new toll free number administrator is chosen, the administrator will obtain access to the information currently found in the toll free database and how that administrator will obtain access to the necessary

⁴³¹ We do receive such information on a case-by-case basis only if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.1403(b) of the Commission's rules. See 47 CFR § 76.1403(d).

⁴³² See para. 8 and n. 391, *supra*.

software, equipment, and other items essential to administration of the toll free database. In this IRFA, we specifically seek comment on how a transition to a new toll free database administrator would impact RespOrgs and toll free subscribers that are small business entities, and how that transition could be structured to minimize disruption in toll free service, which would benefit all toll free subscribers, including small business entities.

173. In the Further Notice, we also seek comment on several issues raised in the comments to the original NPRM. Specifically, we seek comment on whether, as proposed by ACTA: (1) while DSMI continues as the SMS manager, it should report to the Commission; (2) any services that DSMI subcontracts must be subcontracted to an entity neutral and apart from the industry; (3) the selection of an administrator should be by competitive bidding; (4) costs should be reimbursed through fees to the industry; and (5) the new administrator should be responsible for network planning of future toll free codes. We seek comment on, if DSMI is to report to the Commission, what information it should include in its reports. Regarding ACTA's proposals for cost recovery, we seek comment on what specific costs should be reimbursed through fees to "the industry," and what specific members of the industry should be required to bear the costs of toll free number administration. In this IRFA, we specifically seek comment on how ACTA's proposed requirements would impact small business entities.

Federal Rules That Overlap, Duplicate, or Conflict with These Rules: None.

D. Initial Paperwork Reduction Act of 1995 Analysis for Further Notice of Proposed Rulemaking

174. This Further Notice of Proposed Rulemaking ("Further Notice") contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget ("OMB") to take this opportunity to comment on the information collections contained in this Further Notice, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due at the same time as other comments on this Further Notice; OMB comments are due 60 days from the date of publication of this Further Notice in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

E. Notice and Comment Provisions

175. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on the Further Notice of Proposed Rulemaking on or before May 22, 1997, and reply comments are due on or before June 23, 1997. To file formally in this proceeding, you must file and original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file and original plus nine copies. You should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W. 20554.

176. Paperwork Reduction Act. Written comments by the public on the proposed and/or modified information collections are due May 22, 1997. Written comments must be submitted by the Office of Management and Budget ("OMB") on the proposed and/or modified information collections on or before 60 days after publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained in the Further Notice of Proposed Rulemaking should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 2054, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, N.W., Washington, D.C. 20503 or via the Internet to fain_t@al.eop.gov.

Appendix B
List of Commenters

1.800.BALLOON
1-800-FLOWERS
800 Users Coalition ("Coalition")
Aeronautical Radio, Inc. ("ARINC")
AirTouch Paging ("AirTouch")
Allnet Communication Services, Inc. ("Allnet")
Ameritech
American Car Rental Association ("ACRA")
American Petroleum Institute ("API")
American Telegram Corporation ("ATC")
Americas Carrier Telecommunications Association ("ACTA")
AT&T Corporation ("AT&T")
AVIS Rent A Car System, Inc. ("Avis")
Bass Pro Shops ("Bass Pro")
Bass Tickets, Inc. ("Bass Tickets")
Bell Atlantic Telephone Companies ("Bell Atlantic")
BellSouth Telecommunications, Inc. ("BellSouth")
Cable & Wireless, Inc. ("CWI")
Charter Medical Corporation ("Charter Medical")
Communications Managers Association ("CMA")
Communications Venture Services, Inc. ("CVS")
Competitive Telecommunications Association ("CompTel")
Crestar Bank ("Crestar")
DeFabio, Joel ("Joel DeFabio")
Del Webb Corporation ("Del Webb")
Direct Marketing Association ("DMA")
Enterprise Rent-A-Car, Inc. ("Enterprise")
General Services Administration ("GSA")
GTE Service Corporation ("GTE")
INVESCO Funds Group, Inc. ("IFG")
LCI, International ("LCI")
LDDS WorldCom ("LDDS")
MCI Telecommunications Corporation ("MCI")
MFS Communications Company, Inc. ("MFS")
National Telephone Cooperative Association ("NTCA")
NEXTLINK, Inc. ("NEXTLINK")

Network Telephone Services, Inc. ("NTS")
NIMA. International ("NIMA")
Nissan Rosenthal ("Nissan")
NYNEX Telephone Companies ("NYNEX")

Office of Management and Budget ("OMB")
Olson, Mark D. ("Mark Olson")
Organization for the Protection and Advancement of Small Telephone Companies
("OPASTCO")
Pacific Bell and Nevada Bell ("Pacific")
Page, Joseph Edward ("Joseph Page")
Paging Network, Inc. ("PageNet")
Personal Communications Industry Association ("PCIA")
Promoline, Inc. ("Promoline")
Puerto Rico Telephone Company ("PRTC")
Qwest Communications Corporation ("Qwest")
Scherers Communications Group, Inc. ("Scherers")
Service Management System/800 Number Administration Committee of the Ordering and
Billing Forum ("SNAC")
Service Merchandise Company, Inc. ("Service Merchandise")
Southern New England Telephone Company ("SNET")
Southwestern Bell Telephone Company ("SWBT")
Sprint Corporation ("Sprint")
Telecommunications Resellers Association ("TRA")
Telecompute Corporation ("Telecompute")
Telemation International, Inc. ("Telemation")
Telephone Express
Telco Planning, Inc. ("Telco Planning")
Time Warner Communications Holdings, Inc. ("Time Warner")
TLDP Communications, Inc. ("TLDP")
Vanity International
World Savings and Loan Association ("World Savings")
Weather Channel, Inc. ("Weather Channel")
Wise Telecommunications ("Wise")
United States Telephone Association ("USTA")
Unitel Communications, Inc. ("Unitel")
U S West Communications, Inc. ("U S West")

Federal Communications Commission

FCC 97-123

List of Reply Commenters**1-800-FLOWERS**

American Automobile Association ("AAA")
AirTouch Paging and Arch Communications Group ("AirTouch")
Ameritech
AT&T Corporation ("AT&T")
Austin, John ("John Austin")
Bass Pro Shops ("Bass Pro")
BellSouth Telecommunications, Inc. ("BellSouth")
British Airways Plc ("British Airways")
Cable & Wireless, Inc. ("CWI")
Communications Venture Services, Inc. ("CVS")
Competitive Telecommunications Association ("CompTel")
Dial 800, L.P. ("Dial 800")
Eastern Tel Long Distance Service, Inc. ("Eastern Tel")
Enterprise Rent-A-Car, Inc. ("Enterprise")
General Communication, Inc. ("GCI")
General Services Administration ("GSA")
GTE Service Corporation ("GTE")
Interactive CallBrand ("CallBrand")
LDDS WorldCom ("LDDS")
MCI Telecommunications Corporation ("MCI")
MFS Communications Company ("MFS")
National Telephone Cooperative Association (NTCA)
New York Clearing House Association ("New York Clearing House")
NYNEX Telephone Companies ("NYNEX")
Pacific Bell and Nevada Bell ("Pacific")
Paging Network, Inc. ("PageNet")
Personal Communications Industry Association ("PCIA")
Promoline, Inc. ("Promoline")
Qwest Communications Corporation ("Qwest")
Scherers Communications Group, Inc. ("Scherers")
Southwestern Bell Telephone Company ("SWBT")
Sprint Corporation ("Sprint")
Telecommunications Resellers Association ("TRA")
TLDP Communications, Inc. ("TLDP")
United States Telephone Association ("USTA")
U S West Communications, Inc. ("U S West")

Federal Communications Commission

FCC 97-123

**Vanity International
Weather Channel, Inc. ("Weather Channel")**